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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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|------------------------|--|
| Proceeding | 91122524 |
| Party | Defendant Wayne R. Gray |
| Correspondence Address | DAVID L. PARTLOW DAVID L. PARTLOW P.A. P.O. BOX 82963 TAMPA, FL 33682-2963 UNITED STATES |
| Submission | Motion to Reopen |
| Filer's Name | David L. Partlow |
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| Signature | /David L. Partlow/ |
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**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

X/OPEN COMPANY LIMITED,

Opposer,

Opposition No.: 91122524

vs.

Application Serial No.: 75/680,034

WAYNE R. GRAY,

Mark: INUX

Applicant.
_____ /

NOTICE OF FILING DECLARATION OF APPLICANT

COMES NOW Applicant Wayne R. Gray, by and through his undersigned counsel, and gives this notice of filing the attached DECLARATION OF WAYNE R. GRAY IN SUPPORT OF APPLICANT'S MOTION TO RESUME THE OPPOSITION PROCEEDING AND RESET THE SCHEDULE.

Dated: April 8, 2011

Respectfully submitted,

/David L. Partlow/
David L. Partlow, P.A.
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Counsel for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished by email and regular U.S. Mail to Mark Sommers, Esquire, at Finnegan, Henderson, Farabow, Garrett, & Dunner, L.L.P., 901 New York Ave., N.W., Washington, D.C. 20001-4413, this 8th day of April, 2011.

/David L. Partlow/

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

X/OPEN COMPANY LIMITED,

Opposer,

Opposition No.: 91122524

vs.

Application Serial No.: 75/680,034

WAYNE R. GRAY,

Mark: INUX

Applicant.

**DECLARATION OF WAYNE R. GRAY IN SUPPORT OF APPLICANT'S MOTION TO
RESUME THE OPPOSITION PROCEEDING AND RESET THE SCHEDULE**

1. I, Wayne R. Gray, Applicant in this opposition, (herein "Mr. Gray"), make this Declaration on my own personal knowledge.

2. I submit this Declaration in support of "APPLICANT'S COMBINED MOTION AND BRIEF TO RESUME THE OPPOSITION PROCEEDING AND RESET AND EXTEND THE SCHEDULE," (herein the Motion); I have read and understand that Motion, to which the following exhibits are attached; and I have examined and I am familiar with said exhibits.

3. Pursuant to Rule 201 of the Federal Rules of Evidence and as discussed below, Applicant requests that the TTAB take judicial notice of the Exhibits as documents that are briefs filed by SCO or Novell, Inc. ("Novell") and copies of the certified jury trial transcripts on file with the United States District Court for the District of Utah, in the civil action styled *The SCO Group, Inc. v. Novell, Inc.* ("*SCO v. Novell*"), Case No. 2:04cv00139, filed January 20, 2004.

4. I further submit that each of these Exhibits, available from the source given with respect to each of them, is authentic and admissible into evidence as a public record. *See* Fed. R. Evid. 901(b)(7); Fed. R. Evid. 803(8).

5. Exhibit No. 1 to Mr. Gray's Motion is a true and correct copy of certain relevant pages of the Tenth Circuit Appeals Court Ruling dated August 24, 2009, in the action styled *SCO v. Novell*, Appeal No. 08-4217, in the United States Court of Appeals for the Tenth Circuit.

6. Exhibit No. 2 to Mr. Gray's Motion is a true and correct redacted copy of certain relevant pages of the untitled Novell-X/Open May 10, 1994 Agreement, submitted to the court in the civil action styled *Wayne R. Gray v. Novell, Inc., The SCO Group, Inc. and X/Open Company, Ltd.* in the United States District Court for the Middle District of Florida Case No. 8:06-cv-01950-T-33TGW ("*Gray v. Novell, et al.*"), to the Declaration of Evan Raynes (then counsel for Opposer herein) in Support of X/Open's summary judgment motion as Dkt. No. 86-6. Also as X/Open document production therein as Bates Nos. UNIX 000029-UNIX 000051.

7. Exhibit No. 3 to Mr. Gray's Motion is a true and correct copy of certain relevant pages of the Novell-Santa Cruz UNIX Business Asset Purchase Agreement dated September 19, 1995 ("1995 APA"), submitted in Novell's document production as Bates Nos. NOV-32-0000038 - NOV-32-0000094, in the action styled *Gray v. Novell, et al.* in the United States District Court for the Middle District of Florida Case No. 8:06-cv-01950-T-33TGW. Also as Exhibit No. 1 to Dkt. No. 260, as Bates Nos. SCO1185893-SCO1185949, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

8. Exhibit No. 4 to Mr. Gray's Motion is a true and correct copy of Schedule 1.1(a) to the September 19, 1995 APA titled "Assets" submitted in Novell's document production as Bates Nos. NOV-32-0000095 - NOV-32-0000098, in the action styled *Gray v. Novell, et al.* in the United States District Court for the Middle District of Florida Case No. 8:06-cv-01950-T-33TGW. Also as Exhibit No. 1 (part 3) to Dkt. No. 260, as Bates Nos. SCO1185950-SCO1185953, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

9. Exhibit No. 5 to Mr. Gray's Motion is a true and correct copy of Schedule 1.1(b) to the September 19, 1995 APA titled "Excluded Assets" submitted as Exhibit No. 1 (part 3) to Dkt.

No. 260, as Bates Nos. SCO1185954-SCO1185955, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

10. Exhibit No. 6 to Mr. Gray's Motion is a true and correct copy of certain relevant pages of Novell's Seller Disclosure Schedule to the 1995 APA, with Attachment "C" titled "Trademark Status Report" and Attachment "G" titled "Seller Contracts Containing Business Related Rights which are Terminable in the Event of Acquisition," submitted in Novell's document production as Bates Nos. NOV-32-0000107 - NOV-32-0000133, in the action styled *Gray v. Novell, et al.* in the United States District Court for the Middle District of Florida Case No. 8:06-cv-01950-T-33TGW. Also as Exhibit No. 1 to Dkt. No. 260, as Bates Nos. SCO1185962-SCO1185988, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

11. Exhibit No. 7 to Mr. Gray's Motion is a true and correct copy of the December 6, 1995 Bill of Sale to the 1995 APA. Also Exhibit No. 3 to Dkt. No. 260, as Bates No. SCO1185881, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

12. Exhibit No. 8 to Mr. Gray's Motion is a true and correct copy of the October 16, 1996 Amendment No. 2 to the 1995 APA, submitted in Novell's document production as Bates Nos. NOV-32-0000154 - NOV-32-0000156, in the action styled *Gray v. Novell, et al.* in the United States District Court for the Middle District of Florida Case No. 8:06-cv-01950-T-33TGW. Also Exhibit No. 5 to Dkt. No. 260, as Bates Nos. SCO1451873-SCO1451875, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

13. Exhibit No. 9 to Mr. Gray's Motion is a true and correct copy of certain relevant pages of the SCO pleading titled "Memorandum in Opposition to Novell's Motion for Partial Summary Judgment on SCO's Noncompete Claim in its Second Claim for Breach of Contract and Fifth Claim for Unfair Competition" dated May 18, 2007. As Dkt. No. 301, in the action

styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

14. Exhibit No. 10 to Mr. Gray's Motion is a true and correct copy of the December 6, 1995 Technology Licensing Agreement between Santa Cruz and Novell (TLA"), and associated with the 1995 APA, as Exhibit No. 4 to Dkt. No. 260, as Bates Nos. SCO1186018-SCO1186022, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

15. Exhibit No. 11 to Mr. Gray's Motion is a true and correct redacted copy of the Novell-Santa Cruz-X/Open September, 1996 Confirmation Agreement, submitted to the Declaration of Evan Raynes in Support of X/Open's summary judgment motion as Dkt. No. 86-9, in the action styled *Gray v. Novell, et al.* in the United States District Court for the Middle District of Florida Case No. 8:06-cv-01950-T-33TGW. Also as X/Open document production therein as Bates Nos. UNIX 000132-UNIX 000135.

16. Exhibit No. 12 to Mr. Gray's Motion is a true and correct **certified** copy of certain relevant pages of the March 9, 2010 *SCO v. Novell* jury trial transcript, as Dkt. Nos. 855-2, 856 and 856-1, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

17. Exhibit No. 13 to Mr. Gray's Motion is a true and correct copy of the "Declaration of [Novell General Counsel] David Bradford," as Dkt. No. 279, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

18. Exhibit No. 14 to Mr. Gray's Motion is a true and correct copy of the September 18, 1995 Novell Board of Director Meeting Minutes, as Exhibit A to "Declaration of Kellie Carlton in Support of Novell, Inc.'s Motion to Dismiss," as Dkt. No. 57 (Exhibit A), in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah. Also as Exhibit No. Z3 in the *SCO v. Novell* March, 2010 jury trial, entered into evidence on March 9, 2010.

19. Exhibit No. 15 to Mr. Gray's Motion is a true and correct copy of certain relevant pages of the Novell pleading titled "Memorandum in Support of Novell's Opposition to SCO's Motion for Partial Summary Judgment on SCO's First, Second, and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim," filed May 14, 2007 as Dkt. No. 292, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

20. Exhibit No. 16 to Mr. Gray's Motion is a true and correct **certified** copy of certain relevant pages of the March 10, 2010 *SCO v. Novell* jury trial transcript, as Dkt. Nos. 857, 857-1 and 857-2, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

21. Exhibit No. 17 to Mr. Gray's Motion is a true and correct copy of Novell Worldwide Sales Director of UNIX Products Mr. Larry Bouffard's email dated October 18, 1995. Available at SCO's official web site at URL - <http://www.sco.com/company/legal/update/Bouffard.pdf> (last viewed March 24, 2011).

22. Exhibit No. 18 to Mr. Gray's Motion is a true and correct **certified** copy of certain relevant pages of the March 11, 2010 *SCO v. Novell* jury trial transcript, as Dkt. Nos. 858, 858-1 and 858-2, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

23. Exhibit No. 19 to Mr. Gray's Motion is a true and correct **certified** copy of certain relevant pages of the March 12, 2010 *SCO v. Novell* jury trial transcript, as Dkt. No. 859, 859-1, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

24. Exhibit No. 20 to Mr. Gray's Motion is a true and correct **certified** copy of certain relevant pages of the March 23, 2010 *SCO v. Novell* jury trial transcript, as Dkt. Nos. 866, 866-1 and 866-2, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

25. Exhibit No. 21 to Mr. Gray's Motion is a true and correct copy of SCO's August 3, 2005 "Response to Office Action" letter to the USPTO. **USPTO certified document.**

26. Exhibit No. 22 to Mr. Gray's Motion is a true and correct **certified** copy of certain relevant pages of the March 25, 2010 *SCO v. Novell* jury trial transcript, as Dkt. No. 868, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

27. Exhibit No. 23 to Mr. Gray's Motion is a true and correct **certified** copy of certain relevant pages of the March 26, 2010 *SCO v. Novell* jury trial transcript, as Dkt. Nos. 869 and 869-1, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

28. Exhibit No. 24 to Mr. Gray's Motion is a true and correct copy of certain relevant pages of Santa Cruz's antitrust complaint dated January 31, 1997, *Santa Cruz v. Microsoft*, entered into evidence as Exhibit No. 127 in the *SCO v. Novell* jury trial on March 15, 2010, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah. Available at SCO's official web site (last viewed March 24, 2011) at URL - <http://www.sco.com/company/legal/update/Microsoft%20Complaint.pdf> .

29. Exhibit No. 25 to Mr. Gray's Motion is a true and correct copy of certain relevant pages of the SCO memorandum titled "SCO's Memorandum in Support of its Renewed Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial," filed April 27, 2010 as Dkt. No. 872, in the action styled *SCO v. Novell*, Case No. 2:04cv00139, in the United States District Court for the District of Utah.

30. Exhibit No. 26 to Mr. Gray's Motion is a true and correct copy of certain relevant pages of SCO's June 20, 2007 response to Mr. Gray's First Request for Admissions, in the action styled *Gray v. Novell, et al.*, in the United States District Court for the Middle District of Florida, Case No. 8:06-cv-01950-T-33TGW.

I, Wayne R. Gray, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of March, 2011, in Tampa, Florida.


Wayne R. Gray, Applicant